

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Oakland, California)

SIMPSON STRONG-TIE CO., INC.,

Employer,

and

SHEET METAL WORKERS'  
INTERNATIONAL ASSOCIATION,  
LOCAL UNION NO. 162

Case 32-RC-4856

Petitioner.

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, including the parties' briefs and arguments made at the hearing, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in the business of manufacturing walls at its facility on Moffat Boulevard in Manteca, California. During the previous twelve months, the Employer has purchased products valued in excess of \$50,000 directly from vendors located outside the State of California. Accordingly, I find that the Employer is engaged in commerce within the meaning

of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. Petitioner seeks to represent a unit, herein called the Unit, consisting of all full time and regular part time employees at the Moffat Boulevard facility, excluding office clerical employees, guards and supervisors as defined under the Act. A question affecting commerce exists concerning the representation of certain of these employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer contends that those individuals occupying the job classification of leads are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the unit.

6. Contrary to the Employer, the Petitioner contends that the leads are not supervisors within the meaning of Section 2(11) of the Act, and that the job classification of leads should be included in the unit.

7. The Employer contends that Eric Aguirre, who holds the job title of quality coordinator, should be included in the Unit.

8. Contrary to the Employer, the Petitioner contends that Aguirre should be excluded from the Unit because he lacks a community of interest with the other members of the petitioned for unit.

#### THE FACTS

The Employer operates numerous facilities in California where it is engaged in the manufacturing of walls. The Employer began hiring employees to work at a newly constructed facility in Manteca in November, 2000. The facility became fully operational in January 2001.

The plant's leads are: Anthony Petitt, John Matthews, Miguel Rosado, and Lisa Hansen. The four leads were hired in the fall of 2000 to work as regular production workers. On December 8, 2000, Stan Montero, the plant foreman, informed the four individuals that they had been selected to be leads. The four individuals were selected based on their superior experience and skill in wall building.

On December 27, 2000, the four leads were called into the office of plant manager Tony Cervantez to attend a meeting with Cervantez and Montero. At this meeting they were told about the responsibilities of becoming leads. All four leads were told that they would not be hiring or firing employees. According to Cervantez and Montero, the leads were told that they would make recommendations about which employees "weren't making it." Cervantez read a sheet listing the responsibilities of leads and asked them to sign it if they agreed to assume the duties. No one asked any questions and they all signed the agreement.<sup>1</sup> The leads were all given a raise of one dollar an hour – from \$9 to \$10 dollars per hour. Other than the modest pay differential, the leads possess the exact same conditions and benefits as the other production workers. Although Montero considers Petitt the "head lead," there is no difference in benefits afforded to Petitt reflecting a different job status than the other leads.

The leads do not have offices or other private work space. They work on the floor of the facility alongside the production workers. Petitt works in the assembly area; Hansen works in

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<sup>1</sup> The agreement listed the following under the heading of "Lead Person Responsibilities:"  
Maintain an acceptable attendance record.  
Direct work force and assign personnel on a daily basis.  
Training of employees: safety, quality, and operation.  
Be a positive force and influence in all current and future programs.  
Accept other duties and responsibilities as assigned by management.  
Monitor and maintain record sheets.  
Spot check parts to be sure they are done correctly and on time  
Fulfill requirements of established rules, policies, and procedures pertinent to assigned areas.

the OSB (oriented strand board) department; and Rosado works in the wall building department.

Wall building is a large department and Matthews worked as a lead in a separate area within wall building until he was laid off on March 9, 2001. The leads use walkie-talkies while on the very large work site in order to communicate with each other and to communicate with Montero. The leads testified that they are not permitted to enter the office on the work site. Montero testified that the leads are in fact permitted to enter the office. In order to protect the carpet in the office, however, they are not encouraged to go in there. There is a receptacle outside the office door where the leads drop off any documents destined for the office. In any event, the leads do not frequently enter the office.

The leads often arrive at work before the other employees. They set up the work stations and review the work orders for the day. Initially, the work orders were handed out daily. After the first 8 days, the work stabilized somewhat so that lists were only posted weekly or monthly. The lists direct the quantity and variety of walls which need to be produced. The leads possess some authority in effectuating the work orders. The leads train new employees and assist in actual work production. The leads are also responsible for maintaining records and preparing reports.

#### POSITIONS OF THE PARTIES

As noted, the Petitioner seeks to represent an bargaining unit consisting of all full time and regular part time employees at the Moffat Boulevard facility, excluding office clerical employees, guards and supervisors as defined under the Act.

The Employer contends that job classification of leads must be excluded from the Unit because the leads are statutory supervisors. The Petitioner contends that all four leads lack the

indicia of supervisory status under Section 2(11) of the Act and must be included in the Unit and, therefore, permitted to vote in any future election.

The Employer and another local of the Sheet Metal Workers are signatory to a collective bargaining agreement covering the Employer and the employees at its San Leandro facility. This agreement includes leads in the bargaining unit.

### ANALYSIS

The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tuscon Gas and Electric Co.*, 241 NLRB 181, 181 (1979). Section 2(11) of the Act defines a supervisor as one who possesses “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” The possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest, and requires independent judgment in a manner which is more than routine or clerical. *Harborside Healthcare, Inc.*, 330 NLRB No. 191 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). The exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner, however, does not confer supervisory status on employees. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985); *Advanced Mining Group*, 260 NLRB 486, 507 (1982). Because supervisory status removes individuals from some of the protections of the Act, only those personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, set-up men and

other minor supervisory employees." S.Rep.No. 105, 80th Cong. 1 Sec. 4 (1947); *Ten Broeck Commons*, 320 NLRB, 806, 809 (1996). In the instant matter, I find that the Employer, who has raised the contention, has failed to satisfy its burden of proving the supervisory status of the leads.

#### Assignment and Responsible Direction of Work

Leads do not participate in formulating work schedules and cannot authorize overtime or time off. Occasionally an employee will discuss scheduling requests with the leads, but the leads invariably refer the employee to Montero for approval of the request. Production employees do not notify the leads if they are going to be late or are unable to come to work and the leads are not responsible for calling employees in to work in the event that the facility is shorthanded. The leads do not maintain any attendance records and do not report attendance violations. They do not review time cards. Occasionally, Petitt signed an employee's timecard if the employee neglected to punch in at the start of the day or if the time clock malfunctioned. However, according to the testimony of plant manager Cervantez, Petitt was not actually authorized to do so. Petitt testified that he had been reprimanded for signing time cards. There is no evidence that any of the other leads ever signed off on any discrepancies on employees' time cards. These duties are officially handled by Montero. Leads cannot authorize employees to leave work early. If a worker must leave early due to illness or a personal emergency, he or she must get permission from Montero.

The Employer contends that the leads serve as supervisors directing and assigning work while they are on the floor. Rosado has regularly spent a majority of his work day actually making walls. The other leads indicated that when the facility was fully staffed prior to the layoffs on February 28 and March 8, they spent less of their time actually engaged in wall

building. At this time, however, now that there is a smaller staff, it appears that the leads are all actively involved in production for the majority of their work day.

There was some conflict in the testimony regarding the extent to which the leads assign and direct the work of others. However, even viewing the evidence in the light most favorable to the Employer, the evidence does not establish that the leads' role in the assignment of work reached the level of responsibility of directing work. Montero testified that initially he produced a document each day indicating how many of each type of wall should be produced and which employee should work at which exact location on the plant floor. After about a week and a half of production, Montero stopped indicating where the individuals should work, leaving their exact placement to the discretion of leads. By this point, however, a general flow of production had been established so that the leads were engaged in maintaining the status quo rather than exercising independent judgment in the assignment of work. This type of decision making – such as determining which side of a saw table a worker should work on - represents “routine decisions typical of leadman positions.” *S.D.I. Operating Partners, L.P., Harding Glass Division*, 321 NLRB 111, 111 (1996).

The leads are empowered to make temporary position assignment changes on the shop floor in order to facilitate production needs. For example, a lead might have too many employees for the tasks assigned for the day and might offer to send them to work in another lead's department. Conversely, a lead with a particularly busy production schedule for the day might inquire of the other leads as to the possibility of borrowing one or two employees for a short period. The evidence shows, however, that all such switches are discussed and approved by Montero before going into effect. Therefore, the leads themselves do not independently direct production workers' work locations. Furthermore, even if the leads had the ultimate

authority to reassign employees from one station to another, the Board has found that “responsibility for planning or designing a project, which may involve determining such matters as the appropriate staffing, materials, and schedule, must be distinguished from the exercise of authority and independent judgment in the role of assigning and directing employees in the accomplishment of the work.” *S.D.I. Operating Partners, supra*. The record supports a finding that the leads’ responsibilities fall under the rubric of planning a project rather than that of directing employees.

The evidence shows that the leads are responsible for training employees and monitoring the efficiency and quality of production. These duties are consistent with their role as more skilled employees and do not indicate supervisory authority. There is no evidence that the leads make any final determination regarding the quality of the final product or that they are personally responsible if the final product of another employee is unsatisfactory. The Board has long recognized that some highly skilled employees whose primary function is participation in the production or operating processes who incidentally direct the movement or operations of less skilled subordinate employees, nevertheless are not supervisors because their authority is based on their working skills and experience. *Ten Broeck Commons*, 320 NLRB at 808-809. At issue here is whether the direction the leads provide requires independent judgment or whether the directions are merely routine. *Id.* I find, consistent with the Board’s precedent, that the duties performed by the leads as evidenced in the record do not require independent judgment as required by Section 2(11), but are instead performed in a routine and perfunctory manner. *Id.* at 811. See also *Brown & Root, Inc.*, 314 NLRB 19, 21 (1994).

I find, therefore, that the Employer has failed to demonstrate that the leads assign or responsibly direct production workers.



## Recommendation for Termination and Layoffs

### 1. Terminations

The Employer contends that the leads effectively recommend certain employees for termination and for layoffs. The Employer presented evidence of the leads' role in four terminations. Lead Lisa Hansen testified that Cervantez approached her and asked her about the speed of work of employees Matt Belaski and Prince Jackson. She told Cervantez that they were slow but she was not asked to make a recommendation and did not in fact make any recommendation regarding these two employees. Lead Petitt testified that Cervantez told him that he was considering terminating John Kelly and requested that Petitt report back regarding Kelly's productivity. Petitt was not asked to, and did not, in fact, make a recommendation as to whether Kelly should be terminated. Cervantez testified that during a discussion with Rosado regarding the role employee David Mugele had in some poorly made walls, Cervantez commented that he might as well terminate Mugele if he could not build walls. Cervantez testified that Rosado nodded in response and that upon this "recommendation" he decided to terminate Mugele. All four workers were ultimately terminated.

Cervantez testified that in all of these circumstances, he performed an independent review of the productivity and quality of the employees' work prior to deciding that termination was warranted. Because Cervantez made an independent assessment of the employees' work prior to determining whether termination was appropriate, the leads cannot be said to have exercised supervisory authority in recommending their termination.

### 2. Layoffs

By late February, the Employer determined that their employment force exceeded business demands and decided to layoff several employees. On or about February 23, 2001,

Cervantez directed the leads to prepare lists of the “best” and “worst” employees. This request was met with some resistance on the part of Pettit, Matthews and Rosado. Although Cervantez requested the lists in order to determine which employees should be laid off, he intentionally did not inform the leads that this was his plan. Indeed, Cervantez did not want the leads to know the purpose of the lists because he feared that would impair the impartiality of their assessment of the employees. Rosado and Matthews, co-leads of the wall department, turned in a joint list. Pettit and Hansen each turned in their own lists. Subsequently, after receiving the leads’ lists, Cervantez selected 9 employees for layoff on February 28. Cervantez did not adhere strictly to the lists provided by the leads. Not all individuals on the “worst” lists were laid off. Further, some of the individuals laid off appeared on one or more of the lists of “best” workers.

On March 9, the Employer laid off an additional 16 workers, including John Matthews. Prior to this second layoff, Cervantez did not request further input from the leads.

The evidence quite simply does not support a finding that the leads were responsible for selecting which employees would be laid off. First, Cervantez did not adhere to the lists when selecting which employees would be laid off. Instead, he consulted the list but performed his own independent determination of which employees were contributing the least to the productivity of the facility. Second, the leads never recommend these individuals for layoff. They were intentionally kept unaware of the alleged purpose of the lists. Indeed, several leads testified that they thought the lists would be used to determine which workers required additional training. Whatever role the leads played in selecting the individuals for layoff, it cannot be characterized as effectively recommending their discharge because no such recommendations were ever made.

Accordingly, I find that the Employer has failed to establish that the leads had any responsibility for either terminations or layoffs, and therefore they do not possess the Section 2(11) authority to layoff or discharge other employees.

#### Effective Recommendation of Discipline

The Employer contends that the leads have the authority to discipline employees. The Employer concedes that no lead ever issued a written warning. Other than the evidence discussed above about the leads' role in terminations and layoffs, the Employer failed to present any other evidence of a lead disciplining or recommending discipline of a production employee. As noted above, the role the leads played in selecting individuals for termination or layoff cannot be considered supervisory because their "recommendations" were independently verified by Cervantez prior to the Employer taking any action. Accordingly, I find that this evidence is insufficient to establish that the leads have authority either to discipline or effectively recommend discipline.

The Employer also argues that the leads discipline workers on the shop floor by enforcing work rules. For purposes of determining supervisory status, however, the authority to issue instructions and issue minor orders based on greater job skills does not amount to supervisory authority. *Byers Engineering*, 324 NLRB 740 (1997). Rather, any instructions issued and corrections proposed by the leads are in the nature of guidance from a more skilled employee rather than the discipline of a supervisor. "Instructing employees concerning the Employer's rules, even in their breach, demonstrates neither authority over the employees nor exercise of independent judgment as required by Section 2(11)." *S.D.I. Operating, supra* 321 NLRB at 112.

#### Other Primary Indicia

It is undisputed that none of the leads have had any role in the hiring of new employees. Indeed, Rosado testified that he presented Cervantez with a list of individuals who were interested in employment with the Employer. None of these individuals was contacted for employment.

The Employer argues that the leads possess the authority to evaluate workers and resolve complaints which arise between workers. The record is devoid of evidence to establish this contention. A review of personnel files revealed that there have been no evaluations performed by the leads. Nor do the “Lead Person Agreements” signed by the leads indicate that evaluations are part of their job. See footnote 1, *supra*.

Further, the Employer offered merely conclusory evidence that one lead resolved a dispute between two maintenance employees. Thus, Cervantez testified that he recalled Matthews informed him that there had been a dispute which Matthews resolved. Cervantez’ testimony is devoid of any factual background for this claim – he could not recall for certain the names of the individuals or the nature of the dispute. The evidence is insufficient to support the Employer’s claim that leads are either authorized to adjust employee grievances or have ever played any role in resolving disputes between employees.

Based on the record and the above analysis, I conclude that the leads do not possess the primary indicia of supervisory authority enumerated in Section 2(11) of the Act. Specifically, I find the record does not demonstrate that the leads have authority, in the interests of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action in a manner which is not merely routine but requires independent judgment.

### Secondary Indicia of Supervisory Authority

The record indicates that the leads often arrive early to get things organized, and may gain some additional overtime pay per week in addition to the one dollar pay differential. However, the remainder of their benefits and working conditions are the same as other workers. In any event, the fact that the leads earn somewhat more than other production workers does not establish supervisory status, inasmuch as compensation is merely a secondary indicia of statutory supervisory status and is not determinative of the issue. *Auto West Toyota*, 284 NLRB 659 (1978). Furthermore, the Petitioner presented evidence that some non-lead production workers had been paid the same wage as the leads or more.

In its brief, the Employer points to several other indicia of authority based on duties allocated to the leads in the Employer's employee handbook. These include serving as contacts for the production workers regarding personnel changes, payroll problems and educational opportunities. The Employer failed to present evidence that the leads performed these duties or were even aware that such duties were ascribed to them.

Secondary indicia of supervisory authority may be relied upon only in a close case where some evidence indicates the existence of primary indicia. See *GRB Entertainment*, 331 NLRB No. 41 (2000); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993). While I find the secondary indicia of supervisory authority, considered together, do not support a finding that leads are supervisors within the meaning of Section 2(11), I find it unnecessary to rely on the secondary indicia in making this decision since I do not find this to be a close case where some evidence indicates the existence of primary indicia of supervisory status on the part of the leads.

### Eric Aguirre

The parties dispute the appropriateness of including Eric Aguirre in the Unit. Aguirre is

the quality coordinator at the plant. He reports to Bruce Simpson, the Quality Manager. His function is to inspect the finished product to make sure it adheres to the Employer's standards and to keep track of inventory. Neither party presents any evidence that Aguirre possesses supervisory authority. The Petitioner contends that Aguirre should be excluded from the Unit because he lacks a community of interest with the wall builders. The evidence presented by the parties is insufficient to permit a thorough evaluation of the issue. However, because excluding Aguirre would create a residual unit of one employee and because what little evidence that was presented tends to show that he worked alongside the others in the unit engaged in the common task of manufacturing the facility's product, I find that Aguirre should be included in the unit.

*North Jersey Newspapers Co.*, 322 NLRB 394, 396 (1996).

Accordingly, I shall direct an election among the following employees:

**All full time and regular part time employees, including leads and quality coordinator, employed by the Employer at its Moffat Boulevard, Manteca, California facility; excluding office clerical employees, guards and supervisors as defined in the Act.**

There are approximately 20 employees in the Unit.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the voting unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>2</sup> Eligible to vote are those in the voting unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military service of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 162.

## **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them.

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<sup>2</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to

*Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before April 13, 2001. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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the election.



## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by April 27, 2001.

Dated at Oakland California this 6 day of April, 2001.

Veronica I. Clements  
Acting Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, California 94612-5211

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